

SECOND DIVISION

[G.R. No. 172834, February 06, 2008]

JUN MUPAS and GIL MUPAS, Petitioners, vs. PEOPLE OF THE PHILIPPINES, Respondent.

DECISION

TINGA, J,:

Petitioners Jun and Gil^[1] Mupas were found guilty of frustrated homicide in Criminal Case No. 2314 in the Decision^[2] dated 22 November 2002 rendered by the Regional Trial Court of Malaoan, La Union, Branch 34. The dispositive portion of the decision reads:

WHEREFORE, in light of the foregoing, the Court hereby renders judgment declaring both accused JUN MUPAS and GIL MUPAS @ "Banjo" guilty beyond reasonable doubt of the crime of FRUSTRATED HOMICIDE as defined and penalized in Art. 249 in relation with Art. 6 of the Revised Penal Code, and thereby sentenced EACH of the accused to suffer an indeterminate penalty of imprisonment from FOUR (4) YEARS and TWO (2) MONTHS PRISION CORRECCIONAL as Minimum to TEN (10) years PRISION MAYOR as maximum and the accessory penalties provided for by law and to indemnify jointly the private complainant the reasonable amount of P5,000.00 for hospital expenses and other miscellaneous expenses.

The preventive imprisonment suffered by the accused is counted in his favor.

SO ORDERED.^[3]

The relevant antecedents are as follows:

The Information^[4] for frustrated homicide alleged:

That on or about the 18th day of February 1993, in the Municipality of Bangar, Province of La Union, Philippines and within the jurisdiction of this Honorable Court, the above-named accused conspiring, confederating and mutually helping one another and with intent to kill, did then and there willfully, unlawfully and feloniously attack, maul with fist and stones and stab with a knife Rogelio Murao y Sibayan hitting the latter and inflicting injuries on his face and head thus performing all the acts of execution which would have produced the crime of Homicide as a consequence but which nevertheless did not produce it by reason of causes independent of the will of the accused, that was the timely and able medical assistance rendered to the offended party which saved his

life to his damage and prejudice.

CONTRARY TO LAW.^[5]

During the arraignment, petitioners, assisted by counsel, pleaded not guilty to the charge.^[6] Thereafter, trial ensued.

The prosecution presented three witnesses, namely: Rogelio Murao (Rogelio), Flaviano Murao (Flaviano) and Dr. Arsenio B. Martinez (Dr. Martinez).

Rogelio testified that at around 7:30 in the morning of 18 February 1993, he was walking to school with his companion Eduardo Murao, Jr. when Jun suddenly stopped and stabbed him using a 29-inch Batangas knife. Meantime, Banjo bodily restrained him but luckily Rogelio was able to avoid the blow. Next, Banjo and Jun hurled stones at him and hit him on the leg while Rogelio was running eastward. Rogelio then flagged down a motorized tricycle but the two assailants continued to pursue him. While inside the tricycle, Banjo held Rogelio by his neck and punched him while Jun stabbed him several times. Then, Rogelio alighted from the tricycle and ran home. Afterwards, his father and mother accompanied him to the hospital.^[7] There, Dr. Martinez attended to Rogelio and issued a medical certificate containing the following findings:

- Cut wound, 2-3 cm. parietal area
- Abrasion, maxillary area, (L)
- Contusion, maxillary area, (L)
- Abrasion, lumbar area, (L)

HEALING PERIOD: It may take two weeks to heal.^[8]

Prior to the incident, Rogelio recalled that in January of the same year, he had a misunderstanding with Jun where he and the latter hurled invectives at each other. Rogelio suspected that this event gave rise to the subject incident.^[9]

Flaviano, Rogelio's father, testified that on 18 February 1993, Rogelio came home bleeding from head injuries. Immediately, he brought Rogelio to the Martinez Clinic in Bangar, La Union. Flaviano reported that he has spent P2,000.00 for Rogelio's medical treatment and P3,000.00 for attorney's fees and transportation.^[10]

For the defense, Jun testified that on 18 February 1993, at around 7:30 in the morning, he was watering the plants in front of Gil's house when he accidentally sprayed water on Rogelio who was passing by. Rogelio scolded him and Jun immediately apologized. Rogelio then challenged Jun to a fistfight which Jun accepted. After that, Rogelio ran away, picked up big stones and threw them at Gil's house. Jun gave chase and was able to catch up with Rogelio. They both boarded a tricycle and continued their fighting inside. One of the passengers of the tricycle, Josefina Mendoza, pacified the two men. Banjo arrived only when the fighting ceased.^[11]

Afterwards, Jun went home. Then, Rogelio and Flaviano, each armed with a bolo, arrived and challenged Jun to a fight. However, the two could not enter the house as the gate was locked.^[12]

Gil testified that in the morning of 18 February 1993, at around 7:00, somebody threw a stone at their house. He went outside the house and saw Jun chasing Rogelio. He went near them and saw that they had already been pacified by one Ms. Monis. Afterward, he sent the two men home. Gil also went home and thereat, Rogelio, who had a stone with him, arrived with his father Flaviano who was carrying a bolo. Rogelio then challenged Gil and Jun to a fight.^[13]

Danilo Olpindo testified that between 7:00 and 8:00 in the morning of 18 February 1993, he was buying soap from Banjo's store when a fistfight transpired between Rogelio and Jun. Rogelio then ran away, picked up a stone and threw it at Jun. After Rogelio threw another stone at Banjo's house, Jun chased him and had a fistfight with him again. Banjo then came out of the house and asked the two to go home. Danilo also saw Teresita Monis at the scene trying to pacify the two.^[14]

Teresita Monis testified that on that fateful day, she was riding a tricycle when suddenly, somebody from outside punched one of her co-passengers. She saw an arm reach inside the tricycle and hit the passenger. Blood started to ooze from the fellow's forehead. Shortly, she had to alight from the tricycle to attend the flag ceremony at her school.^[15]

Josefina Mendoza testified that on said day, she saw Jun box Rogelio. Subsequently, Banjo went near the two and dispersed them.^[16]

Jun and Gil were found guilty as charged and the judgment of conviction was elevated to the Court of Appeals.

Before the Court of Appeals, Jun and Gil argued that the trial court erred in: (1) finding Gil guilty of the crime charged despite the prosecution's failure to prove his guilt beyond reasonable doubt; and (2) finding Jun guilty of the crime of frustrated homicide instead of physical injuries only.^[17]

Jun and Gil contended that Rogelio had failed to identify with moral certainty that Gil had been one of those who inflicted the injury on him. They pointed out that Rogelio had failed to categorically state that Gil and Banjo Mupas are one and the same person. Moreover, they asserted that in Jun's case, the prosecution had failed to prove intent to kill and as such, he should be convicted only of the crime of physical injuries.^[18]

The Court of Appeals in a Decision^[19] dated 23 January 2006, in CA-G.R. CR. No. 27768, affirmed with modifications the decision of the trial court. The dispositive portion of the decision reads:

WHEREFORE, the *Decision* appealed from convicting accused-appellants **JUN MUPAS and GIL MUPAS alias BANJO MUPAS** of the crime of Frustrated Homicide is **AFFIRMED with MODIFICATION** in that appellants are ordered to pay **ROGELIO MURAO** in the amount of P4,000 as temperate damages.

SO ORDERED.^[20]

After a review of the records of the case, the Court of Appeals concluded that Banjo Mupas and Gil Mupas are one and the same person. The Court of Appeals observed that when Banjo posted a bail bond in the case entitled "*People of the Philippines v. Jun Mupas and Banjo Mupas*," he had made no objection to the caption of the case and he had even signed his name as Gil Mupas. Secondly, when the Information was amended to include Gil's alias, Banjo did not interpose any objection to the correction. Lastly, Rogelio had not been able to identify Banjo in court due to the latter's absence at the time of his testimony.^[21]

The Court of Appeals likewise held that Jun already performed all the acts of execution necessary to bring about the death of Rogelio which would have transpired had it not been for the timely medical intervention. As such, the trial court correctly found him liable for the crime of frustrated homicide.^[22]

Jun and Gil are now before the Court reiterating their assertion that the prosecution failed to establish Gil's identity as one of the perpetrators of the crime and that his defense of denial was duly supported by clear and convincing evidence.^[23] They also contend that on the assumption that Jun is guilty of having committed a crime, he should only be convicted of the crime of physical injuries.^[24]

There is merit in the petition.

The Constitution mandates that an accused shall be presumed innocent until the contrary is proven beyond reasonable doubt. The prosecution has the burden to overcome such presumption of innocence by presenting the quantum of evidence required. In addition, the prosecution must rest on its own merits and must not rely on the weakness of the defense. In fact, if the prosecution fails to meet the required quantum of evidence, the defense may logically not even present evidence on its own behalf. In which case, the presumption of innocence shall prevail and hence, the accused shall be acquitted. However, once the presumption of innocence is overcome, the defense bears the burden of evidence to show reasonable doubt as to the guilt of the accused. Reasonable doubt is that doubt engendered by an investigation of the whole proof and an inability after such investigation to let the mind rest each upon the certainty of guilt. Absolute certainty of guilt is not demanded by the law to convict a criminal charge, but moral certainty is required as to every proposition of proof requisite to constitute the offense.^[25]

The trial court solely hinged its judgment of conviction on the victim Rogelio's lone and uncorroborated testimony. While it is true that the testimony of one witness is sufficient to sustain a conviction if such testimony establishes the guilt of the accused beyond reasonable doubt, the Court rules that the testimony of one witness in this case is not sufficient for this purpose.^[26] Apart from Rogelio's testimony, the Court observes that the prosecution's version of events has no leg to stand on.

In his Sworn Statement^[27] dated 23 February 1993, Rogelio admitted that he had a companion with him on that fateful incident named Eduardo Murao, Jr. He also stated that there were other persons who may have witnessed the assault namely, "Josephine Mendoza, Terisita Mico and one Mario Olpindo, the driver of the tricycle." On the witness stand, Rogelio likewise testified that there had been others who may have witnessed the incident including Eduardo Murao, Jr. and Teresita Monis.^[28]

Interestingly, Josephine Mendoza testified for the defense that she had only witnessed a fistfight between Jun and Rogelio while Teresita Monis, also for the defense, testified that she had only seen a hand reach inside the tricycle to hit Rogelio.

It appears then that Rogelio had at his disposal many witnesses who could have supported his allegations but curiously and without any explanation, none of these so-called witnesses were presented. It is thus Rogelio's word against the attestations of others. Such omission already raises a reasonable doubt as to the guilt of the petitioners.

In contrast, the defense was able to present three (3) other witnesses than the petitioners themselves. In the Court's view, Danilo Olpindo, one of the defense witnesses, could hardly be called a biased witness contrary to the appellate court's opinion. He may indeed be Jun's second cousin but the appellate court failed to consider that Danilo is likewise Rogelio's third cousin^[29] which fact, in the Court's estimation, cancels the supposed partiality based on kinship.

Danilo Olpindo, Josefina Mendoza together with Jun and Gil are in agreement that a fistfight occurred between Jun and Rogelio. In addition, Jun admitted that the fighting continued inside a tricycle. Teresita Monis attested that this latter detail did occur but was not able to identify whose hand it was that reached in the tricycle and hit Rogelio.

Juxtaposing the testimonies of the witnesses, it can be safely deduced that a fistfight occurred only between Jun and Rogelio which continued inside a tricycle. Rogelio's allegations of Banjo's participation in the incident and that Jun carried with him a bolo are uncorroborated and bereft of any proof. Absent proof of Gil alias Banjo's involvement in the incident, his acquittal is in order.

Assuming that Gil alias Banjo had any participation, there is likewise no evidence that he or Jun had intent to kill Rogelio. Intent to kill is the principal element of homicide or murder, in whatever stage of commission. Such intent must be proved in a clear and evident manner to exclude every possible doubt as to the homicidal intent of the aggressor.^[30]

Although it can be fairly assumed that the injuries suffered by Rogelio were sustained during the fistfight, it is not conclusive that the same were inflicted purposely to kill him. For one, if Jun in fact had been carrying a bolo with intent of killing Rogelio, and if indeed Banjo had conspired with Jun, it is no small wonder why the wounds inflicted were more superficial than mortal, more mild than grave. That Rogelio was able to go home shortly after the tricycle incident without being pursued by his aggressor also shows that Jun and Banjo were not intent on beating him to death or even leaving him for dead.^[31] It is thus wrong to infer that the intent to kill was present in the absence of circumstances sufficient to prove this fact beyond reasonable doubt.^[32] Moreover, Rogelio's suggested motive for killing him, *i.e.*, his previous altercation with Jun, was too weak and shallow a reason to kill under the circumstances.^[33]

Notably, Dr. Martinez, Rogelio's attending physician, opined that if Rogelio's wound was left untreated it could lead to his death, **but at the same time** he also testified